

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6379 OF 1996

1. The Administrative Officer
Municipal School Board,
Pune P.M.C.,
Pune 411 005.
2. Headmaster,
Pune Municipal Corporation
Primary School No.14 (Boys)
Pune 411 004.
3. Headmaster,
Pune Municipal Corporation
Primary School (Boys),
Dapodi, Pune 411 012. ...Petitioners.

Versus

Shri. Mohan E. Jagtap,
211, Khairewadi,
Ganeshkhind,
Pune 411 004 ...Respondent

.....

Mr. Sanjay J. Raikar, counsel for Petitioners

Mr. N.A. Kulkarni, counsel for Respondent.

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CORAM: B. H. MARLAPALLE, J.

DATED: 19/20TH APRIL, 2005

JUDGMENT: -

1. Complaint (ULP) No. 189 of 1992 was filed before the Labour Court at Pune by the present respondent and one Mr. Dattatraya Raghunath Gosavi. However, during the pendency of the said complaint, Mr. Gosavi died, he withdrew from the complaint and therefore, the complaint was prosecuted only by the

present respondent and it came to be allowed by the learned Judge of the Labour Court at Pune vide his judgment and order dated 1.11.1995. The alleged termination letter dated 2.3.1992 was set aside and he was directed to be reinstated in his original post and capacity with continuity of service and full backwages. The said decision was challenged in Revision Application (ULP) No. 164 of 1995 and the learned Member of the Industrial Court at Pune vide his judgment and order dated 14.6.1996 was pleased to dismiss the said Revision. The petitioner employer has, therefore, approached this Court and impugned the orders passed by both the Courts below.

2. While granting rule, this Court noted that the respondent was already reinstated and granted interim stay with respect to the payment of backwages only, vide order dated 8.9.1997. The record and proceedings as called for from the Labour Court has been considered. By order dated 6.7.1996 the petitioner has reinstated the respondent as a Watchman on daily wages in School No.29 Harkar Nagar, Bhavani Peth, Pune and he is presently in service as a Watchman.

3. As per the complainant, he was appointed on permanent basis by the Administrative Officer of the Municipal School Board, Pune Municipal Corporation

vide appointment order dated 1.7.1992. However, his initial appointment was vide appointment letter dated 28.1.1988. He was also issued an appointment order dated 14.8.1989. He rendered continuous service with spotless service record. On an apprehension of discharge, dismissal/termination, he had filed Regular Civil Suit No. 1055 of 1992 in the Court of Civil Judge Junior Division at Pune in which the order of status quo was granted on 10.7.1992. Subsequently, the suit was dismissed as not maintainable and the stay order granted initially came to be continued upto 9.9.1992. In the complaint filed before the Labour Court, an application at Exh.U-2 was filed for interim relief, in which he had further contended that he had completed the period of 240 days of service during the period of 12 months preceding the date of termination. Mandatory requirements of Section 25F of the Industrial Disputes Act, 1947 (for short "I.D. Act") were not complied with and therefore, it was a case of illegal retrenchment from service. The present petitioners have filed reply and opposed the complaint by stating that the complainant was appointed as a daily wager and on temporary basis, he did not complete the continuous service of one year at any time and his appointment was intermittent. It was denied that he was in service for about four years. The allegation that the termination was in breach of mandatory

requirements of Section 25F of the I.D. Act were also denied. It was on the other hand contended that the said provisions were not applicable and in any case there was no termination of service at the hands of the employer.

. The Labour Court after considering the evidence adduced by both the parties held that the employment of the complainant was terminated by the present petitioners and the said termination was illegal. Unfair Labour Practice under Item 1 (b), (d) and (f) of Schedule IV of M.R.T.U. and P.U.L.P. Act, 1971 was held to have been proved. The termination order dated 2.3.1992 was directed to be set aside by reinstating the complainant to his original post and with continuity of service as well as full backwages. This order dated 1.11.1995 passed by the II Labour Court at Pune came to be challenged in Revision Application (ULP) No. 164 of 1995 and the learned Member of the Industrial Court was pleased to dismiss the said Revision vide his judgment and order dated 14.6.1996, after hearing the respective parties.

4. A preliminary objection was raised by the present petitioners regarding the maintainability of the complaint by relying upon the provisions of Section 62 of the Bombay Pre Primary and Primary Education Act, 1947 (for short "Education Act") by contending

that unless the notice of one month was issued by the complainant against the present petitioners, the Labour Court could not have entertained the complaint. The Labour Court held that there was no provision for any employee to give one month's notice prior to filing of any case or Suit and thus overruled the preliminary objection.

. On merits, the Labour Court noted that the complainant was for the first time appointed by letter dated 28.1.1988 as a Watchman on temporary basis but without indicating the period for which he was appointed. Another appointment letter dated 14.8.1989 as a Watchman on temporary basis and without mentioning the duration of the appointment. The final order dated 1/4.7.1992 appointing the complainant as a Watchman on daily wages was also referred to by the Labour Court and it held that this appointment was in a permanent vacancy. So far as the period of service, the Labour Court drew an adverse inference against the petitioners on account of their failure to submit documents in response to the application submitted by the complainant. The petitioners had contended that the documents called for by the complainant were not traceable. The Labour Court, therefore, recorded a finding that there was nothing on record to hold that the complainant was appointed intermittently and not

continuously. The Labour Court also held that the complainant had put in 240 days of service and therefore, it was obligatory on the part of the present petitioners to comply with the requirements of Section 25F of the I.D. Act and failure to do so resulted in the termination order being illegal and bad in law.

5. Section 62(1) of the Education Act reads as under;-

62. (1) No suit, prosecution or other legal proceedings shall be commenced against any school board or authorized municipality or a servant thereof or any person acting under the orders of the said board or municipality for anything done, or purporting to have been done in pursuance of this Act, which entitles or requires a school board, authorized municipality, member, officer, servant as such or other person so acting to exercise any powers or perform duties without giving to such school board, authorized municipality, member, officer, servant or person one month's previous notice in writing of the intended action and of the case thereof, or after six months from the date of

the act complained of.

6. It thus creates a bar of filing Suit, prosecution or other legal proceedings against any School board or authorized municipality without giving to such School board one month's previous notice in writing of the intended action or after six months from the date of the act complained. The Labour Court held that this Section was applicable only for filing of Suit. This conclusion drawn by the Labour Court is in utter disregard to the above quoted provisions. The provisions of giving notice is not only applicable for suits but it is applicable for any prosecution or legal proceedings that may be commenced against any School Board. The term "school board" as defined under Section 2(19) of the said Act means a municipal school board. The term "municipal school board" means the school board constituted for the area of an authorized municipality under section 3 as defined under Section 2(11) of the Act. As per Section 2(2) "approved school" means a primary school maintained by the State Government or by the school board or Zilla Parishad or by an authorized municipality or which is for the time being recognized as such by a school board or Zilla Parishad or by the State Government or by an officer authorized by it in this behalf. The term

"authorized municipality" means a municipality which is authorized by the State Government under sub-section (1) of section 16 to control all approved school within its area, as per Section 2(6).

. The complaint filed by the respondent before the Labour Court was a legal proceeding. The Labour Court will have to consider this issue afresh and its finding that the said bar applies only to the suits cannot be sustained.

7. Now coming to the findings of continuous service of 240 days, it appears that the Labour Court lost sight of the definition of "continuous service" within the meaning of Section 25B of the I.D. Act. It would be appropriate to reproduce the relevant provision of Section 25B of the I.D. Act, as under:-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or as strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer -

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b)

8. If the date of alleged termination was 1/4.7.1992, it was necessary for the Labour Court to record the findings with reference to the said date inasmuch as whether the complainant had put in 240 days of work in the period of twelve months preceding

the said date of alleged termination. The Labour Court in its cryptic findings only states that the complainant had worked continuously for 240 days with the petitioners. It is not known on what basis this finding was recorded, more so when in the earlier part of the impugned order, the Labour Court itself referred to the appointment orders dated 28.1.1988, 14.8.1989 and 1/4.7.1992. On the other hand it has drawn adverse inference against the present petitioners on their failure to produce the record as requisitioned by the complainant by filing an application. Mr. Rairkar, the learned counsel for the petitioners has rightly relied upon the following two decisions in support of his arguments that it was not permissible for the Labour Court to draw adverse inference in the facts of the present case;-

(i) Rajasthan State Ganganagar S. Mills Ltd.
Vs. State of Rajasthan and Anr. [(2004) 8
SCC 161]

(ii) Municipal Corporation, Faridabad Vs. Siri
Niwas [(2004) 8 SCC 195].

9. From the record and proceedings it is noted that the appointment orders dated 28.1.1988, 14.8.89 and

1/4.7.92 were issued in favour of the respondent employee. The last appointment letter states that the respondent was appointed from 1.7.1992 on daily wages as a Watchman but against the permanent vacancy. It also stated that he was appointed on permanent basis and in case his work was found to be unsatisfactory, he would be removed without notice from the employment of the Education Board, Pune Municipal Corporation. There is another order dated 5.3.1992. It was in response to the application submitted by the respondent himself on the same date and it states that from 5.3.1992 he was allowed to resume duty as a Watchman at Primary School No.76 on daily wages. The xerox copies of Muster rolls and wages register of July, August and September, 1992 have been placed on record and it is seen that the employment of the respondent was terminated on 2.9.1992 and in the month of July, 1992 he has been paid wages for 29 days whereas in August, 1992 he has been paid for 31 days. These are the copies of wages register maintained at Primary School No.76. It appears that the respondent was transferred to the said school by an order dated 4.12.1990 and w.e.f. 5.12.1990. Though the learned counsel for the petitioner placed reliance on the above cited two decisions of the Apex Court, no reasons have come forward as to why the entire record at least from December, 1990 till 2.9.1992 could not be placed

before the Labour Court from Primary School No.76 and it cannot be accepted that the said record was not traceable, more so when the copies of payment register for July to September 1992 have been placed on record. In the instant case, it was therefore, necessary for the present petitioners to discharge the burden to show that (a) the respondent was not in service continuously, (b) he was appointed intermittently, (c) his employment was terminated on account of unsatisfactory performance or surplus age as the case may be and (d) whether he had completed 240 days of service during the period of 12 months prior to 2.9.1992.

10. In the premises, the Complaint (ULP) No. 189 of 1992 decided by the Labour Court requires to be remanded to the Labour Court at Pune for fresh decision so that the objection raised by the present petitioners on the basis of the provisions of Section 62 of the Education Act is adjudicated upon and the petitioners take steps to bring on record the attendance or wages register copies for the period from December, 1990 to June, 1992 or at least from September 1991 to June 1992. Resultantly, the petition is allowed partly and the impugned orders are quashed and set aside. The complaint (ULP) No. 189 of 1992 is remanded for fresh trial and the parties shall appear before the Labour Court at Pune

on 2.5.2005 and place additional documentary evidence on record. On remand, Complaint No.189 of 1992 be heard and decided on or before 31.8.2005.

. It is made clear that the respondent workman shall not be disturbed from the present employment until the complaint is decided by the Labour Court.

11. In the meanwhile, the parties are at liberty to explore the possibilities of compromise, more so when Mr. Kulkarni, the learned counsel for the respondent on instructions states that he is willing to forgo the backwages if he is regularised as a permanent employee.

12. Rule made absolute accordingly with no order as to costs. Writ to go to the Labour Court forthwith.
